Office - Supreme Court
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CHARLES ELMORE

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1952.

Calendar No. 162.

ASTRA PICTURES, INC.,

Petitioner,

—against—

EUREKA PRODUCTIONS INC., JEWEL PRODUCTIONS INC., SAMUEL CUMMINS and ROSE CHATKIN,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

The above-entitled case of Astra Pictures, Inc., against Eureka Productions, Inc., *et al.*, was docketed on June 26, 1952, and bears No. 162 on the Calendar of the October Term, 1952 of this Court; and the case of Gustav Machaty v. Astra Pictures, Inc. *et al.*, was also docketed on June 26, 1952, and bears No. 161 on the Calendar of the October Term, 1952 of this Court.

The said two cases were tried *separately* before Hon. Charles A. Dewey, United States District Judge.

The two cases were not tried together for the sole reason that counsel for Astra, in each of said two cases, opposed such consolidation (Record of Astra v. Eureka, pp. 19-25).

The same basic facts of *authorship* and *copyright* ownership were and are involved in both of said two cases.

However, the United States Court of Appeals (on motion of Counsel for Machaty in the case of Machaty v. Astra, and on motion of Counsel for Eureka, *et al.*, in the action of Astra v. Eureka, *et al.*), *ordered that the above two appeals be consolidated and argued and submitted together.*

Pursuant to said order of consolidation, the said two appeals when reached for argument before the Court of Appeals, were, therefore, argued together, and the *opinion* of the Court of Appeals bears *both titles* of said two cases, and discusses the merits of both appeals under one consolidated opinion (Record in the case of Astra v. Eureka, p. 550, and Record in the case of Machaty v. Astra, p. 663).

The United States Court of Appeals, at the outset of its consolidated opinion, says:

> *"The essential facts are the same in both cases; for that reason, the cases were consolidated on appeal."*

(Record in the case of Astra v. Eureka, p. 551; and Record in the case of Machaty v. Astra, p. 664.)

The Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit, in the case of *Astra Pictures, Inc.*, Petitioner, against *Eureka Productions, Inc., et al.*, Respondents (Calendar No. 162, on the Calendar of the October Term, 1952, of this Court), and the Petition for the Writ of Certiorari to the United States Court of Appeals, in the case of *Gustav Machaty*, Petitioner, against *Astra Pictures, Inc., et al.*, Respondents (Calendar No. 161, on the Calendar of the October Term, 1952, of this Court), should, therefore, be consolidated and considered together.

Statement of Fa

Since the Court of Appeals has l that, "*The essential facts are the same in both cas* (Record of Astra v. Eureka, p. 551; and Record in case of Machaty v. Astra, p. 664), the Respondent reka respectfully prays that the Petition for the W of Certiorari of Gustav Machaty in the other case Machaty v. Astra, docketed herein, and bearing No. 1 be deemed interposed in opposition to the Petition the Writ of Certiorari of Astra Pictures, Inc., in *instant* case of Astra v. Eureka, with the same fo and effect as if said Petition of Gustav Machaty we et forth at length in this Brief of Respondent, Eureka *et al.*

ARGUMENT.

I.

The petition shows no circums ices which warrant the granting of a writ of ce orari.

The Court of Appeals decided th Astra had valid rights in the film until 1944 *only*, as licensee of Elekta, (R. 564).

Between 1944 and the commenceme of this action in 1948, Astra acquired no further lice e from Machaty, the author, or from Elekta the distril or.

Astra, therefore, without having a ired any further license to said film, between 1944 d to date, from either Machaty or from Elekta, has ken it upon itself *as a total stranger* to said film to ring suit against Eureka.

The struggle in these two cases, is as to the ownership of the copyright, between Machaty, as the producer and author, on the one hand, and Elekta-Film, the general licensee from Machaty, on the other, as outlined in the Petition for the Writ of Certiorari of Gustav Machaty; and it will serve no useful purpose to repeat the arguments submitted in support of the Writ of Certiorari of Gustav Machaty, to the effect, that the copyright reverted to Machaty and not to Elekta.

In any event, whether the copyright reverted to Machaty, or to Elekta, it could make no difference as to Astra, as Astra's right to distribute the film terminated in *1944*. Astra, therefore, could not maintain any action predicated upon the copyright to said film.

The Court of Appeals was therefore right in dismissing the complaint of Astra Pictures, Inc.

II.

The state judgment in favor of Machaty and against Elekta was binding on the Federal Courts.

On August 14, 1950, judgment was entered in favor of Gustav Machaty and against Elekta, in the Supreme Court of the State of New York.

The United States Court of Appeals in construing the Supreme Court judgment and the Prague judgment, said:

> "Both judgments decided that Machaty was the present owner of the distribution rights as against Elekta." (Opinion, R. 555.)

This Court has held that the judgment of a State Court is binding upon the Federal Courts.

Angel v. *Bullington*, 330 U. S. 183.

In *Frost* v. *Bankers Commercial Corporation*, 194 F. (2d) 505, Second Circuit, the Court said:

> "Plaintiffs may not escape the impact of a previous state judgment by suing in the federal court. For purposes of *res judicata* its doors are as effectively closed to them as though they were courts of New York (*Angel* v. *Bullington*, 330 U. S. 183)."

Since the State Court decided that "Machaty was the present owner of the distribution rights as against Elekta", it follows that such judgment is binding also on Astra, as a former licensee of Elekta.

The Court of Appeals, therefore, erred in failing to apply the principle of law that the judgment of the State Court was binding on the Federal Courts, and that by reason of such principle of law the copyright therefore reverted to Machaty, and *not* to Elekta.

WHEREFORE, Respondent respectfully submits that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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